

## § 351.404

## 5 CFR Ch. I (1–1–09 Edition)

establishing a separate competitive level.

(5) If a competitive area includes positions in one or more pay bands, each set of interchangeable positions in the pay band under paragraphs (a)(1) through (4) of this section is a separate competitive level (e.g., with interchangeable positions under paragraphs (a)(1) through (4) of this section, each pay band is one competitive level; if the positions are not interchangeable under paragraphs (a)(1) through (4) of this section, the pay band may include multiple competitive levels).

(b) Each agency shall establish separate competitive levels according to the following categories:

(1) *By service.* Separate levels shall be established for positions in the competitive service and in the excepted service.

(2) *By appointment authority.* Separate levels shall be established for excepted service positions filled under different appointment authorities.

(3) *By pay schedule.* Separate levels shall be established for positions under different pay schedules.

(4) *By work schedule.* Separate levels shall be established for positions filled on a full-time, part-time, intermittent, seasonal, or on-call basis. No distinction may be made among employees in the competitive level on the basis of the number of hours or weeks scheduled to be worked.

(5) *By trainee status.* Separate levels shall be established for positions filled by an employee in a formally designated trainee or developmental program having all of the characteristics covered in § 351.702(e)(1) through (e)(4) of this part.

(c) An agency may not establish a competitive level based solely upon:

(1) A difference in the number of hours or weeks scheduled to be worked by other-than-full-time employees who would otherwise be in the same competitive level;

(2) A requirement to work changing shifts;

(3) The grade promotion potential of the position; or

(4) A difference in the local wage areas when a competitive area includes positions covered by more than one

wage-board or similar wage-determining procedure;

(5) A difference in locality payments under 5 U.S.C. 5304 and subpart F of part 531 of this chapter when a competitive level includes more than one locality pay area listed in § 531.603 of this chapter; or

(6) Representative rates in different local commuting areas when a competitive area includes General Schedule (GS) and Federal Wage System (FWS) positions in multiple GS locality pay areas, and/or FWS local wage areas.

[51 FR 319, Jan. 3, 1986, as amended at 60 FR 3062, Jan. 13, 1995; 62 FR 62500, Nov. 24, 1997; 73 FR 29388, May 21, 2008; 73 FR 46532, Aug. 11, 2008]

### § 351.404 Retention register.

(a) When a competing employee is to be released from a competitive level under this part, the agency shall establish a separate retention register for that competitive level. The retention register is prepared from the current retention records of employees. Upon displacing another employee under this part, an employee retains the same status and tenure in the new position. Except for an employee on military duty with a restoration right, the agency shall enter on the retention register, in the order of retention standing, the name of each competing employee who is:

(1) In the competitive level;

(2) Temporarily promoted from the competitive level by temporary or term promotion; or

(3) Detailed from the competitive level under 5 U.S.C. 3341 or other appropriate authority.

(b)(1) The name of each employee serving under a time limited appointment or promotion to a position in a competitive level shall be entered on a list apart from the retention register for that competitive level, along with the expiration date of the action.

(2) The agency shall list, at the bottom of the list prepared under paragraph (b)(1) of this section, the name of each employee in the competitive level with a written decision of removal under part 432 or 752 of this chapter.

[51 FR 319, Jan. 3, 1986, as amended at 62 FR 62500, Nov. 24, 1997]